

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Squad #8	CCRB Case #: 201502623	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/01/2015 2:53 AM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 10/1/2016	EO SOL 10/1/2016	
Date/Time CV Reported Wed, 04/01/2015 3:50 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/07/2015 3:18 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Henry Daverin	03631	945645	075 PCT
2. POM Todd Hansen	13329	949083	075 PCT
3. POM Michael Ardolino	03101	951507	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM James Seder	06788	947479	075 PCT
2. POM Michael Seiger	16689	952225	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Henry Daverin	Abuse: Sgt. Henry Daverin authorized the search of the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
B.SGT Henry Daverin	Abuse: Sgt. Henry Daverin frisked § 87(2)(b)	§ 87(2)(b)
C.SGT Henry Daverin	Abuse: Sgt. Henry Daverin refused to provide his name to § 87(2)(b)	§ 87(2)(b)
D.POM Todd Hansen	Abuse: PO Todd Hansen refused to provide his name to § 87(2)(b)	§ 87(2)(b)
E.POM Michael Ardolino	Abuse: PO Michael Ardolino refused to provide his name to § 87(2)(b)	§ 87(2)(b)

Case Summary

On April 1, 2015, at approximately 2:53 a.m. (time established from Event § 87(2)(b) Board Review (BR 1), at § 87(2)(b) in Brooklyn (BR 2), § 87(2)(b) was approached by officers from the 75th Precinct. This report addresses the following allegations: Sgt. Henry Daverin authorized the search of § 87(2)(b)'s car (**Allegation A**), frisked him (**Allegation B**), and Sgt. Daverin, PO Todd Hansen and PO Michael Ardolino refused to provide their names to him (**Allegations C through E**). § 87(2)(b) was issued Parking Violation § 87(2)(b) (BR 3).

Mediation, Civil and Criminal Histories

- § 87(2)(b) (BR 4) was offered mediation as a means to resolve his complaint and he opted for an investigation.
- § 87(2)(b) had not filed a notice of claim in regard to the incident as of August 17, 2015, over a month past the 90-day filing deadline (BR 5).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Civilian and Officer CCRB Histories

- § 87(2)(b) has been involved in the following CCRB complaints (BR 7):
 - § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- Sgt. Daverin has been a member of service (MOS) for seven years and has 14 CCRB allegations pled against him in seven other cases (BR 8). None of these allegations were substantiated. In CCRB 201205977, an allegation of a refusal to provide a name and/or shield number was closed as unsubstantiated.
- PO Hansen has been an MOS for five years and has 27 CCRB allegations pled against him in nine other cases (BR 9). § 87(2)(g) [REDACTED] In CCRB 201211134, the Board substantiated and recommended charges for an allegation of improperly seizing and searching a civilian's cellphone, and the NYPD disposition and penalty are pending as of this writing. In CCRB 201405351, the Board substantiated and recommended charges for two allegations of entering and/or searching a premises and an allegation of property damage, and the NYPD disposition and penalty are pending as of this writing.
- PO Ardolino has been an MOS for three years and has 11 CCRB allegations pled against him in three other cases (BR 10). None of the allegations were substantiated. In CCRB 201401512, an allegation of a refusal to provide a name and/or shield number was closed as unsubstantiated.

Potential Issue

Video footage was obtained from TARU for a camera located near the incident location and it showed no part of the incident.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) alleged that officers identified as Sgt. Daverin and PO Hansen searched his car. § 87(2)(g)

Allegation A – Abuse of Authority: Sgt. Henry Daverin authorized the search of the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) (BR 4) said that at the time of the incident, he was sleeping alone in a rental car, a silver 2015 Dodge Charger, which was rented under the name of his wife § 87(2)(b). Earlier that day, he was involved in an accident with the car (BR 11) about three blocks away from his residence, the incident location. As one of the car's wheels was badly damaged, it took 45 minutes for § 87(2)(b) to bring the car to the front of his residence, and he parked it facing against traffic. The car made a terrible crunching sound when it moved and § 87(2)(b) did not want to turn it around once he made it to the front of his residence in fear of further damaging the car. He slept in the car because he did not want anyone to rob it and because he and § 87(2)(b) fought about what happened to the car. The car was running with the heat on, as it was cold outside. The officers, identified as Sgt. Daverin, PO Hansen and PO Ardolino, approached the car with flashlights, awaking § 87(2)(b). After § 87(2)(b) opened the car door at the officers' instructions, he told them that he had been asleep and he was in the car because he had gotten into a fight with his wife. The officers told him that he should sleep on the couch. The officers instructed § 87(2)(b) to exit the car. § 87(2)(b) asked if he could get his slippers and an officer said that he could not. § 87(2)(b) was placed at the rear of the car with his back to it. PO Ardolino stood with him while Sgt. Daverin and PO Hansen searched the front of the car, although he could not see where. § 87(2)(b) asked PO Ardolino what was going on. PO Ardolino said, "You're driving a 2015 Dodge Charger, man. Don't you know drug dealers be using these cars?" § 87(2)(b) told PO Ardolino that he was stereotyping, the officers were wrong for what they were doing and that he drives any type of car he wants. § 87(2)(b) thought PO Hansen also searched the back of the car because he brought § 87(2)(b) his slippers, which had been in the backseat. § 87(2)(b) put his slippers on and shortly thereafter, the handcuffs were removed. § 87(2)(b) was kept with his back to the car for about fifteen minutes, and he thought Sgt. Daverin and PO Hansen searched the car for this whole time. § 87(2)(b) made no mention of the officers retrieving the rental agreement from the car. § 87(2)(g)

Sgt. Daverin (BR 14) said that while doing patrol, the officers observed the Dodge Charger parked the wrong way on § 87(2)(b), a northbound, one-way street, and was jutting out slightly. The vehicle was damaged on the right side and seemed totaled. § 87(2)(b) was face down in the backseat and almost looked as if he was hiding from the officers. Sgt. Daverin banged on the window. When § 87(2)(b) awoke and jumped up, he immediately reached under the seats and his hands were empty at the time. This caused Sgt. Daverin to fear for his safety. He banged on the window and ordered § 87(2)(b) to open the vehicle. He could not recall if he tried to open the car door himself, but was certain that he did. § 87(2)(b) stopped reaching

under the seats and his hands were empty. After § 87(2)(b) unlocked and opened the door, Sgt. Daverin removed him from the car by grabbing somewhere on his upper body. He saw no contraband in plain view and saw nothing inside the car that raised his suspicions. Sgt. Daverin instructed one of the officers (he could not recall who) to search the car in the immediate area where § 87(2)(b) reached in the backseat. Sgt. Daverin did this to ensure there was no weapon in the car and determine for what § 87(2)(b) reached. The officer, identified via investigation as PO Hansen, did this and nothing was found in the car. § 87(2)(b) told the officers that the car was a rental and Sgt. Daverin asked to see the paperwork for this. § 87(2)(b) told either PO Hansen or PO Ardolino (Sgt. Daverin could not recall who) to retrieve the rental agreement from the glove compartment. PO Hansen or PO Ardolino (Sgt. Daverin could not recall who) did this and Sgt. Daverin knew of no other closed compartment within the car being entered. § 87(2)(b) explained that he was in a vehicle accident earlier that day and was in the car because he had argued with his girlfriend. Sgt. Daverin could not recall any officer talking to § 87(2)(b) about Dodge Chargers, or commenting in general about this type of car. PO Ardolino did not say that drug dealers drive Dodge Chargers.

§ 87(2)(g)
§ 87(2)(b) PO Hansen could not see § 87(2)(b)'s hands before he awoke and could not recall where they were. § 87(2)(b) was sprawled out on the backseat, and both front seats were pushed forward. After § 87(2)(b) jumped up, the first thing he did was reach under the driver's seat, which raised PO Hansen's suspicions and made him feel unsafe. PO Hansen did not know if § 87(2)(b) was reaching for or placing something under the seat. § 87(2)(b) used his hands to lift himself back onto the seat, as he fell off when he awoke, and his hands were empty. Nothing in the car in plain view made PO Hansen feel unsafe. § 87(2)(b) stepped out of the car voluntarily. § 87(2)(b) said the car was a rental under the name of his girlfriend or wife. The officers asked where the rental agreement was. § 87(2)(b) said to PO Hansen, "You guys can go get it. It's right in the glove box." PO Hansen went to the front passenger's door, opened it and took the rental agreement out of the glove compartment. He did not reach into any other part of the car and did not reach into the area where § 87(2)(b) placed his hands. He was uncertain if any other officer reached into any part of the car. No comment was made to § 87(2)(b) about the kind of people who drive Dodge Chargers and PO Ardolino did not say that drug dealers drive them.

§ 87(2)(g)
§ 87(2)(b) : § 87(2)(b) was face-down on the backseat and his hands were empty. When § 87(2)(b) jumped up, PO Ardolino could not recall under which front seat § 87(2)(b) reached and his hands were empty when he brought them back out. It was never established why § 87(2)(b) did this and the action raised PO Ardolino's suspicions. After § 87(2)(b) exited the car, Sgt. Daverin brought him to the rear and the officers spoke to him about what happened with the car. PO Ardolino asked for the paperwork for the car. § 87(2)(b) said the documents were in the glove compartment and said that the officers could retrieve it. PO Ardolino thought he reached into the glove compartment to retrieve the documents, but was uncertain. He did not reach into the car at any other time. He could not recall another officer reaching into the backseat or where § 87(2)(b) had his hands, although this was possible. He could not recall Sgt. Daverin issuing any instructions regarding the car. PO Ardolino's suspicions about § 87(2)(b) were allayed after speaking to him, even given his earlier actions of reaching under the seat. PO Ardolino made no comment to him about drug dealers driving Dodge Chargers.

An officer's observation of furtive movements within a car does not alone justify a search of the car if a defendant is in no position to obtain a weapon when a search is conducted, People v. Derrell, 889 N.Y.S.2d 95 (BR 15). When nothing in a defendant's behavior prior to a car stop suggests that (s)he is armed, a hand motion is insufficient basis for a vehicle search, especially if the defendant is removed from the vehicle and there is no immediate threat to the officers, People v. Chann, 633 N.Y.S.2d 150 (November 2, 1995) (BR 22).

§ 87(2)(g)

Allegation B – Abuse of Authority: Sgt. Henry Daverin frisked § 87(2)(b)

§ 87(2)(b) did not allege that he was patted down in his CCRB testimony (BR 4) or his phone statement (BR 22).

Sgt. Daverin (BR 14) said that when § 87(2)(b) awoke in the car and jumped up, he immediately reached under the seats and his hands were empty at the time. This caused Sgt. Daverin to fear for his safety. He banged on the window and ordered § 87(2)(b) to open the vehicle. § 87(2)(b) stopped reaching under the seats and his hands were empty. After Sgt. Daverin instructed the car to be searched, he patted § 87(2)(b) down. He initially said that he did this on § 87(2)(b)'s waistband, rear and groin area, ankles and anywhere a weapon would generally be found. He then said that he could not recall exactly where he patted down § 87(2)(b) but was certain he conducted a thorough frisk that took about thirty seconds. He saw nothing creating any bulges on § 87(2)(b)'s person and saw nothing resembling a weapon. He did this for the safety of everyone involved and was only looking for weapons, given the movement that he saw § 87(2)(b) make in the car.

PO Ardolino (BR 13) could not recall Sgt. Daverin patting down § 87(2)(b). PO Ardolino saw no bulges, anything resembling a weapon or anything that made him feel unsafe on § 87(2)(b)'s person. PO Hansen (BR 12) was not asked about the frisk of § 87(2)(b) but also asserted that nothing on § 87(2)(b)'s person made him feel unsafe.

An officer has the authority to frisk an individual if he or she has a reasonable suspicion that they are in danger of physical injury by virtue of the individual being armed, People v. De

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Sgt. Daverin (BR 14) could not recall if the officers' badges were displayed when they first approached § 87(2)(b). When asked if Sgt. Daverin thought § 87(2)(b) was intoxicated, he said that it was possible, but could not recall why he thought so at the time. Before leaving the scene, he told § 87(2)(b) that he had to move his car, as it was parked illegally. He could not recall if § 87(2)(b) asked him who he was or asking the officers to whom he was speaking. He could not recall the officers laughing in a response to a request to identify themselves. He never refused to identify himself to § 87(2)(b). The officers resumed patrol and Sgt. Daverin planned to give § 87(2)(b) a couple minutes before returning to ensure that the car was parked legally.

Before the officers could return, a 911 call came over the radio from the same location and the operator stated that § 87(2)(b) alleged harassment from plainclothes officers. When Sgt. Daverin was asked if § 87(2)(b) alleged that officers beat him up, this prompted his recollection that § 87(2)(b) probably did allege this. The officers returned to the scene within five minutes from when they left. § 87(2)(b) was inside his car, which had not been moved. Sgt. Daverin asked about the 911 call and § 87(2)(b) denied ever calling 911. As § 87(2)(b) did not move his car, Sgt. Daverin called a Conditions officer identified as PO Seder to the scene to issue § 87(2)(b) a summons. The second time at the scene, § 87(2)(b) asked who Sgt. Daverin was and he provided his name, shield and command. The other officers did not do this because § 87(2)(b) did not request this information of them. Neither he nor any officer identified himself as Sgt. Hernandez and there was no Sgt. Hernandez on the scene. The officers then left.

§ 87(2)(g) : PO Hansen could not recall if the officers' shields were displayed when they first approached § 87(2)(b). As soon as the car door opened, PO Hansen smelled alcohol. § 87(2)(b) was notably intoxicated because he slurred his words and smelled of alcohol. § 87(2)(b) did not ask to whom he was speaking, but the officers at some point identified themselves as officers. § 87(2)(b) did not in any capacity ask PO Hansen to identify himself and he never refused to provide this information. PO Hansen could not recall § 87(2)(b) asking Sgt. Daverin and PO Ardolino to identify themselves, and he never witnessed them refusing to do this. No officer identified themselves as Sgt. Hernandez, and no Sgt. Hernandez was on the scene. In the call to 911, according to the dispatcher, § 87(2)(b) alleged harassment and that the officers beat him up. When the officers returned to the scene, PO Hansen asked § 87(2)(b) about the allegation he made of officers beating him up, and § 87(2)(b) denied alleging this. PO Hansen went over the radio and asked the dispatcher to repeat the job, and the dispatcher did so, repeating the allegation of officers beating up § 87(2)(b). After PO Seder arrived to the scene and issued § 87(2)(b) a summons, the officers left.

§ 87(2)(g) : The officers had their badges displayed and identified themselves as officers before § 87(2)(b) was asked to exit the car. PO Ardolino could not recall § 87(2)(b) asking in any capacity for the officers' identities. § 87(2)(b) never asked PO Ardolino for his identifying information. PO Ardolino could not recall § 87(2)(b) asking, "Who am I talking to?" He did not witness any officer refusing to identify themselves and he did not do this. No officer identified themselves as Sgt. Hernandez and one was never on the scene. PO Ardolino could not recall if the 911 call that came over after the officers left contained any allegation of the officers roughing or beating up § 87(2)(b). He could not recall if he or any officer asked § 87(2)(b) if he told the 911 operator that officers were beating or roughing him up, but he did not think so. After § 87(2)(b) was issued a summons, the officers left the scene.

In § 87(2)(b)'s call to 911 (BR 17; BR 18), he sounded upset, and did not slur his words or otherwise sound intoxicated. He stated the following: Three plainclothes officers harassed him when he was sleeping in his car outside his residence. He asked to see their badges, which were not displayed. The officers threatened him and said he was getting "nasty." He did not understand who he was talking to, as the officers did not have their badges out. He made no mention of officers beating him up.

The radio communications (BR 19; BR 20) for Event § 87(2)(b) (BR 1), generated with § 87(2)(b)'s call to 911, contain the following information: At the 5:00 minute mark, Central reported a harassment in progress at the incident location by three plainclothes officers

with no badges. At the 12:00 minute mark, Central reported that a male caller stated that the officers “roughed him up” and tried to arrest him. At the 22:29 minute mark, an officer asks for the job to be repeated and this is done, including the allegation of officers roughing up the male caller. At the 35:32 minute mark, a summons is issued.

Officers are required to courteously and clearly state their names to anyone who requests this information of them, Patrol Guide Procedure 203-09 (BR 21).

§ 87(2)(g)

[REDACTED]

Squad: 8

Investigator:	_____	<u>Leanne Fornelli</u>	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date